

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 8, 2004

D044366 Albanza Corporation v. Lober

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20 (c (2))).

D043346 People v. Holder

D043562 People v. Holder

The judgments are affirmed but for the 18-month sentence imposed on count 2 in SCD175193. The judgment is modified to impose a 16-month consecutive sentence on count 2 in SCD175193. The trial court shall amend the abstract of judgment to reflect the modification and advise the Department of Corrections of the amendment. Benke, J.; We Concur: McConnell, P.J., McIntyre, J.

D044413 In re Amber A., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D043573 In re Pedro L., a Juvenile

The juvenile court's order is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Irion, J.

D041726 People v. Vasquez et al.

The petition for rehearing is denied.

D042328 Mussey Grade Park, LLC et al. v. Pine et al

D043126 Mussey Grade Park, LLC et al. v. Pine et al

(Consolidated cases) The judgment is affirmed. The portion of the order awarding attorney fees against appellant Griffin is reversed. The remainder of the order is affirmed. Each side shall bear its own costs on appeal. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

Clerk: D E Moore

D043891 People v. Anani

D044652 In re Anani on Habeas Corpus

Cause called on merits. Arthur Martin, Esq. argued for appellant. Daniel Rogers, Deputy Attorney General argued for respondent. Mr. Martin replied. Cause submitted as to appeal ONLY, D043891.

D044338 In re Jasmin B. et al., Juveniles

D045336 In re Jasmine B. et al., Minors on Habeas Corpus

Cause called on merits. Kathleen M. Mallinger, Esq. argued for appellant, Teresade B. Maryann Marisa Milcetic, Esq. argued for appellant, Griselda B. Andrea St. Julian, Esq. argued for minors. Paula Roach, Deputy County Counsel, argued for respondent. Ms. Milcetic replied. Ms. Mallinger replied. Cause submitted as to appeal ONLY, D044338.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
NOVEMBER 8, 2004 (Continued)

D043260 Cox et al. v. Bedeco, Inc., et al.

Cause called on merits. Virginia Nelson, Esq. argued for appellant. Kendra Hall, Esq. argued for respondent, Bedeco, Inc. Rita Gunasekaran, Esq. argued for respondent, Stu Segall Productions, Inc. Darin L. Wessel, Esq. argued for respondent, Prior. Ms. Nelson replied. Cause submitted.

D043854 Wilcox v. Wilcox

Cause called on merits. Brian Nomi, Esq. argued for appellant. Jimmy Ray Ayers, Esq. argued for respondent. Mr. Nomi replied. Cause submitted.

Court recessed at 10:19 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D042230 Quicksilver Development Corporation v. Ray

Cause called on merits. Jon R. Williams, Esq. argued for appellant. Michael Wright, Esq. argued for respondent. Mr. Williams replied. Cause submitted.

D043281 Toscano v. Greene Music

Cause called on merits. Candace Carroll, Esq. argued for appellant. Mark A. Bennett, Esq. argued for respondent. Ms. Carroll replied. Cause submitted.

D044044 In re Miguel E. et al., Juveniles

Cause called on merits. Joseph T. Tavano, Esq. argued for appellant, Deborah V. Christopher Blake, Esq. argued for Miguel E. M. Elizabeth Handy, Esq. argued for Aaron and Casey A. Gary Seiser, Deputy County Counsel argued for respondent. Cause submitted.

Court recessed at 11:32 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

Clerk: D. E. Moore

D043607 Ellsworth et al. v. Board of Retirement et al.

Cause called on merits. Michael A. Conger, Esq. argued for appellant. Steven Paul Rice, Esq. argued for respondent, Board of Retirement. Diane Bardsley, Deputy County Counsel argued for respondent. Mr. Conger replied. Cause submitted.

D043304 Oliver v. Bank of America

Cause called on merits. Jason Dumbeck, Esq. argued for appellant. Karen O. Frankudakis, Esq. argued for respondent. Mr. Dumbeck replied. Cause submitted.

Court recessed at 1:57 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 8, 2004 (Continued)

D042459 Sanchez et al. v. Giromex, Inc., et al.

Cause called on merits. Henry Rossbacher, Esq. argued for appellant. Teresa Trucchi, Esq. argued for respondent. Mr. Rossbacher replied. Kevin Peter Roddy, Esq. was present in oral argument for appellant, but did not argue. Cause submitted.

Court recessed at 2:24 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D043372 Kaiser v. Palomar Pomerado Health

Cause called on merits. Charles Moore, Esq. argued for appellant. Martha L. McGill, Esq. argued for respondent. Mr. Moore replied. Cause submitted.

Court recessed at 2:39 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D043057 Butera v. Rice et al.

Cause called on merits. Brian Rawers, Esq. argued for appellant/cross-respondent, MacLeod. Julie Saake, Esq. argued for respondent/cross-appellant. Mr. Rawers replied. Mr. Rawers argued on behalf of the Catalano appeal. Ms. Saake replied. Frank Noble, Esq. argued for appellant/cross-respondent, Rice. Cause submitted.

Court recessed at 3:17 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D043787 Crosspoint Venture Partners 1997, et al. v. Maxim Pharmaceuticals, Inc., et al.

Cause called on merits. Terry Ross, Esq. argued for appellant. Kathryn Bacal, Esq. argued for respondent. Mr. Ross replied. Cause submitted.

Court recessed at 4:02 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

D042481 Offner v. Alexandra Ponce De Leon et al.

Cause called on merits. Mary A. Lehman, Esq. argued for appellant. Richard H. Benes, Esq. argued for respondent. Ms. Lehman replied. Cause submitted.

Court recessed at 4:40 p.m. until Tuesday, November 9, 2004 at 9:00 a.m.

D044828 In re Jasmine S., a Juvenile

Respondent's unopposed request to augment the record on appeal with subsequent evidence, and to dismiss the mother's appeal as moot is granted.

D045178 Yates v. San Diego Unified School District Board of Education

Fernando Yates' appeal from the August 27, 2004 order staying the above referenced action pending final resolution of Yates v. Board of Education, Superior Court Case No. GIC828652, is dismissed on the ground the appeal is from a nonappealable, interlocutory order.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
NOVEMBER 9, 2004

D043843 People v. Zambrano

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D043743 United Services Automobile Association v. Herwig

The judgment is affirmed. USAA is entitled to costs on appeal. McDonald, J.;
We Concur: McConnell, P.J., Haller, J.

D041561 Lucas v. State of California et al.

The orders sustaining the demurrers to Lucas's nonsection 1085 claims are affirmed. The judgment denying Lucas's petition for a writ of mandate is reversed and remanded for an evidentiary trial consistent with this opinion. McDonald, J.; We Concur: Huffman, Acting P.J., Irion, J.

D043256 Zionsville Engineering, Inc. v. Seaside Helicopters, Inc.

The order is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Haller, J.

D044170 People v. Radke

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

D042809 People v. Martinez

The judgment is affirmed, except the sentence is reversed and the matter remanded for resentencing with directions that the trial court exercise its discretion to impose concurrent or consecutive terms of 15 years to life under section 667.61 for Martinez's three section 288, subdivision (a) convictions. McDonald, J.;
We Concur: Huffman, Acting P.J., Haller, J.

D044789 In re Y.R. et al., Juveniles

The appeals are dismissed. Benke, J.; We Concur: McConnell, P.J., McDonald, J.

D045190 Pruchnik v. Superior Court of San Diego County/Toms et al.

The petition and the request to file supplemental briefing are denied.

D045007 La Costa Resort & Spa et al. v. Workers' Compensation Appeals Board/Dommel

The matter is remanded to the WCAB for the purpose of making a supplemental award to Dommel of attorney fees for services rendered in connection with the petition for the writ of review. The petition is denied.

D044634 People v. Berry

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 30.3).

D042458 People v. Koonce

The petition for rehearing is denied.

D044436 In re A.L., a Juvenile

The judgment is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 9, 2004 (Continued)

D044225 People v. Clark

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Irion, J.

D045196 Michelle P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Michelle P. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed. The case is dismissed.

D045348 Wilson v. Superior Court of San Diego County/People

The petition is denied.

D045199 In re Quarles on Habeas Corpus

The petition is denied.

D045186 In re Ismael Sepulveda on Habeas Corpus

The petition is denied.

D045092 Keri G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case is dismissed.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

Clerk: D. E. Moore

D043173 People v. House of Prince

Cause called on merits. Joseph A. Ginsburg, Esq. argued for appellant, House of Prince. Elli Leibenstein, Esq. argued for amicus appellant, Brown & Williamson. Peter Williams, Deputy Attorney General argued for respondent. Mr. Ginsburg replied. Cause submitted.

Court recessed at 10:10 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D043538 Sukumar v. Sukumar

Cause called on merits. Tim Blackford, Esq. argued for appellant, Lee. Todd R. Gabriel, Esq. argued for appellant, Sukumar. James R. Ballard, Esq. argued for respondent. Mr. Blackford replied. Mr. Gabriel replied. Cause submitted.

D042738 JLRB Associates et al. v. Livingston

Cause called on merits. Stephen F. Lopez, Esq. was present in oral argument for appellant. Andrew A. Kurz, Esq. was present in oral argument for respondent. A recusal was made in open court. Cause to be recalendared at a later date.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court recessed at 10:51 a.m. until 1:30 p.m.
Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller
Clerk: D. E. Moore

D041515 People v. Fierro

Cause called on merits. Patrick J. Hennessey, Esq. argued for appellant. Daniel Rogers, Deputy Attorney General argued for respondent. Mr. Hennessey replied. Cause submitted.

D043987 In re Patrick J., a Juvenile

Cause called on merits. Cristina Gabrielidis, Esq. argued for appellant. Kristen Chenelia, Certified Law Student argued for respondent. Ms. Gabrielidis replied. Cause submitted.

Court recessed at 2:03 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D041699 People v. Gomez

Cause called on merits. R. Clayton Seaman, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent and submitted additional authorities. Mr. Seaman replied. Cause submitted.

Court recessed at 2:30 p.m. to change panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D043373 Mendoza v. Lane et al.

Cause called on merits. Katherine Weadock, Esq. argued for respondent. Joe Mendoza argued for appellant in pro per. Cause submitted.

Court recessed at 2:52 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D041265 Waterbury v. Phoenix House San Diego, Inc.

Cause called on merits. Carl Fabian, Esq. argued for appellant. John B. Little, Esq. was present in oral argument for appellant, but did not argue. David Holnagel, Esq. argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 3:41 p.m. to change panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D041034 Czarnik v. Illumina, Inc.

Cause called on merits. Kathryn E. Karcher, Esq. argued for appellant. David A. Niddrie, Esq. argued for respondent. Ms. Karcher replied. Cause submitted.

Court recessed at 4 p.m. until Wednesday, November 10, 2004 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 10, 2004

D042624 In re Marriage of Lyon

The judgment is affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

In re K.D., a Juvenile

The order terminating dependency jurisdiction is reversed and the court is directed to hold periodic review hearings to ensure ongoing visitation is occurring. All other orders are affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

D043412 In re Estate of Diaz

The judgment is affirmed. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

D043230 USAT Reorganization LLC et al. v. Writer Sr. et al.

The order granting defendants motion under Code of Civil Procedure section 425.16 is reversed. The order denying plaintiffs relief under Corporations Code section 709 is reversed and the matter is remanded with directions that the court fashion equitable relief under Corporations Code section 709, rule on plaintiffs' demurrer, and conduct further proceedings in accordance with this opinion. Defendants' motion to dismiss the appeal is denied. Plaintiffs shall recover their costs on appeal. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

D044993 In re Ashley D., a Juvenile

The appeal is dismissed. Huffman, J.; We Concur: McConnell, P.J., McIntyre, J.

D045351 Sharon S. v. Superior Court of San Diego, County/Annette F.

The petition is denied.

D044936 In re Olivia J., a Juvenile

D045222 In re Olivia J., a Juvenile

Appellant's motion to consolidate case numbers D044936 and D045222 is GRANTED. All future filings to be filed under D044936. Appellant's opening brief is due on November 29, 2004.

D043347 People v. May

The judgment is affirmed. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

Court convened at 9 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

Clerk: D. E. Moore

D043505 Greer v. City of Escondido et al.

Cause called on merits. Michael M. Hogan, Esq. argued for appellant. Jason L. Aldrich, Esq. argued for respondent. Mr. Greer replied. Cause submitted.

Court recessed at 9:23 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 10, 2004 (Continued)

D041953 Atta v. Adams

Cause called on merits. David A. Kay, Esq. argued for appellant. Nancy G. Kendall, Esq. argued for respondent. Cause submitted.

Court recessed at 9:41 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D043785 Long et al. v. Belvedere et al.

Cause called on merits. Kenneth C. Hoyt, Esq. argued for appellant. George V. Paluso, Esq. argued for respondent. Cause submitted.

D044209 In re Olivia J., a Juvenile

Cause called on merits. Kathleen M. Mallinger, Esq. argued for appellant. Alice C. Shotton, Esq. argued for the minor. Lisa Maldonado, Deputy County Counsel argued for respondent. Ms. Mallinger replied. Cause submitted.

D044450 In re Melina B. et al., Juveniles

Cause called on merits. Andrea St. Julian, Esq. argued for appellant, the children. Christa Baxter, Deputy County Counsel argued for respondent. Donna Kaiser, Esq. argued for David B. Linda Fabian, Esq. argued for Michelle B. Ms. St. Julian replied. Cause submitted.

Court recessed at 10:46 p.m. until 1 p.m.

Court reconvened at 1 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. E. Moore

D042004 Lacher v. East County Investigations, et al.

D042732 Lacher v. East County Investigations Corp., et al. (cases argued together)

Cause called on merits. Pamela G. Lacher, Esq. argued for appellant in pro per. Gastone Bebi, Esq. argued for respondent. Ms. Lacher replied. Cause to be submitted once Mr. Bebi files his Declaration, and Ms. Lacher files responsive papers.

Court recessed at 1:30 p.m. and reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron
Clerk: D.E. Moore

D042562 Petty et al. v. Hill

Cause called on merits. Christopher K. Barnette, Esq. argued for appellant. Jack M. Sleeth, Jr., Esq. argued for respondent. Mr. Barnette replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 10, 2004 (Continued)

D042631 MHC Financing Limited Partnership Two v. City of Santee

D043129 MHC Financing Limited Partnership Two v. City of Santee (cases heard together)

Cause called on merits. James Bell Gilpin, Esq. argued for appellant. Elliott L. Bien, Esq. argued for respondent. Mr. Gilpin replied. Melissa W. Woo, Esq. was present in oral argument for appellant, but did not argue. Cause submitted.

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D042579 Dorsett v. Experience Hendix, LLC

Cause called on merits. Michael Paul Guta, Esq. argued for appellant/cross-respondent. Patricia Jo Custer, Esq. argued for respondent/cross-appellant. Mr. Guta replied. Cause submitted.

D043604 Goycochea et al. v. Weir et al.

Cause called on merits. Todd A. Moore, Esq. argued for appellant. Robert J. Hanna, Esq. argued for respondent. Mr. Moore replied. Cause submitted.

Court recessed at 3:45 p.m. until Monday, November 15, 2004 at 10 a.m.

D045320 Davis v. Superior Court of San Diego County/People

The petition is denied.

D045336 In re Jasmine B. et al. on Habeas Corpus

In light of this court's decision in In re Jasmin B., D044338, filed on November 10, 2004, the petition is denied as moot.

D044338 In re Jasmin B. et al., Juveniles

The order denying Teresa's section 388 petition is affirmed. The judgments terminating G's parental rights are reversed and remanded for new permanency planning hearings in accordance with the views expressed in this opinion. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D044062 In re Dustin M., a Juvenile

The motion to submit additional evidence on appeal is denied, the judgment terminating parental rights is affirmed, the order for issuance of the restraining order is reversed, and the matter is remanded to the juvenile court for a properly noticed hearing on the motion for a permanent restraining order. Nares, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
NOVEMBER 12, 2004

D043887 People v. de Santiago

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Haller, J.

D040121 Andrade v. Snyder et al.

Respondent's opposed motion to dismiss the appeal is granted.

D045370 Strode v. Superior Court of San Diego County/Citicapital Commercial Corp. et al.

The petition is denied.

D042582 City of San Diego et al. v. Barczewski

The appeal by appellant and cross-respondent City of San Diego and the cross-appeal by respondent and cross-appellant Barczewski are dismissed.

D045142 Coy's Produce Inc., et al. v. Workers' Compensation Appeals Board et al.

The petition is dismissed.